

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 05-255
Competition in the Market for the Delivery of)	
Video Programming)	

COMMENTS

W.A.T.C.H. TV Company (“W.A.T.C.H. TV”) hereby submits its comments in response to the Commission’s *Notice of Inquiry* (“*NOI*”) in the above-captioned proceeding.¹

At paragraph 77 of the *NOI*, the Commission asks for information on “the factors that have led wireless cable operators to move away from offering video services over their platforms,” and asks whether “[the] trend of wireless cable exiting video programming [is] an indicator of the scale of the video platform” that is necessary to compete in the marketplace. W.A.T.C.H. TV submits that while the “trend” of wireless cable exiting video programming exists, the simple fact is that a wireless cable system can compete successfully against incumbent cable and Direct Broadcast Satellite (“DBS”) operators if it digitizes its facilities and, like its competitors, is thereby able to offer hundreds of channels of programming to its subscribers. Indeed, as the operator of one of the few digital video wireless cable systems in the United States, W.A.T.C.H. TV can attest to the viability and public interest value of digital wireless cable service that offers consumers the same number and variety of programming options as cable and DBS systems in the same market. However, recent developments arising from the Commission’s ongoing rewrite of its rules for the

¹ FCC 05-155 (rel. Aug. 12, 2005).

Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) in WT Docket No. 03-66 have created regulatory uncertainty that threatens the very existence of W.A.T.C.H. TV’s operations and those of other digital wireless cable operators who, while smaller in number than before, remain an essential source of video programming service for their communities.²

By now W.A.T.C.H. TV’s story is well known to the Commission.³ After more than thirteen years and well over \$22,000,000 of investment by the small telephone company that owns it, W.A.T.C.H. TV has successfully transformed its operations from the initial 11-channel analog video-only service it launched in 1992 into a state-of-the-art network that utilizes all available BRS and EBS spectrum to provide over 200 channels of digital video and audio programming to over 12,000 subscribers throughout the Lima, OH market. W.A.T.C.H. TV’s digital video/audio service is fully competitive with that of the larger cable and DBS operators, providing consumers a similar range of programming at lower cost.⁴ Furthermore, W.A.T.C.H. TV already provides high-speed

² See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) [“*Report and Order*”]. Prior to issuance of the *Report and Order*, BRS was referred to as “MDS” or the Multipoint Distribution Service, and EBS was referred to as “ITFS” or the Instructional Television Fixed Service. To avoid confusion on this issue, these comments will use BRS and EBS consistently throughout.

³ See Reply to Opposition to Petition for Reconsideration of W.A.T.C.H. TV Company, WT Docket No. 03-66 (filed Mar. 9, 2005) [“W.A.T.C.H. TV Reply”]; Petition of W.A.T.C.H. TV Company for Reconsideration, WT Docket No. 03-66 (filed Jan. 10, 2005) [“W.A.T.C.H. TV Petition”]; *Ex Parte* Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, to Michael K. Powell, Chairman, Federal Communications Commission, WT Docket No. 03-66 (filed June 1, 2004); Comments of W.A.T.C.H. TV Company, WT Docket No. 03-66 (filed Sept. 8, 2003) [“W.A.T.C.H. TV Comments”]; Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, to John B. Muleta, Chief, Wireless Telecommunications Bureau, WT Docket No. 03-66 (filed July 29, 2003) [“W.A.T.C.H. TV July 29, 2003 Letter”]; Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, to Marlene H. Dortch, Secretary, Federal Communications Commission, RM-10586 (filed Nov. 14, 2002).

⁴ W.A.T.C.H. TV competes directly with cable MSOs Time Warner, Adelphia and Charter, and with DBS operators DirecTV and EchoStar. See Mansell, “W.A.T.C.H. TV: Rural Broadband That Works,” *Kagan Broadband Fixed Wireless*, at 5 (May 31, 2003).

Internet access to over 4,800 subscribers throughout the Lima market, has built out the infrastructure to serve far more and is adding subscribers daily.⁵ The rapid growth of W.A.T.C.H. TV's high-speed Internet access service can be traced, in part, to the fact that many consumers in its service area have access to no other high-speed Internet access provider. Indeed, because neither of its DBS competitors carries the local television stations in Lima and because DBS is still struggling to develop a viable broadband product for residential customers, *W.A.T.C.H. TV is the only operator in its market capable of offering multichannel video programming packages and broadband services that are fully competitive with those of the cable system operators.*⁶ As one might expect, W.A.T.C.H. TV's presence in the market thus imposes downward pressure on how competing services are priced, as W.A.T.C.H. TV offers consumers a highly attractive alternative.

Simply stated, W.A.T.C.H. TV has succeeded because it has accepted and met every challenge the Commission has put before it over the past thirteen years. That is, at a time when the Commission was promoting analog wireless cable service as a competitive alternative to monopoly cable providers, W.A.T.C.H. TV launched its wireless cable system (one of the first in the United States) in 1992 with eleven analog BRS channels, ending its first year of operation with 1,706 subscribers.⁷ Two years later, after entering into leasing arrangements for all available EBS

⁵ W.A.T.C.H. TV began offering Frequency Division Duplex ("FDD") high-speed Internet over BRS channels 1 and 2 in the 2150-2162 MHz band (upstream) and 2.5 GHz channels (downstream) in October, 2001. *See Report and Order*, 19 FCC Rcd at 14173. The company recently supplemented its FDD offering with a lower-power, non-line-of-sight Time Division Duplex ("TDD") system for customers interested in portable broadband service in the more densely populated portion of W.A.T.C.H. TV's Geographic Service Area.

⁶ Moreover, since off-air television reception often is not feasible for subscribers in remote areas, many of W.A.T.C.H. TV's customers rely exclusively on the company's multichannel video service for local television programming.

⁷ *See* W.A.T.C.H. TV July 29, 2003 Letter, Attachment 1.

channels, W.A.T.C.H. TV expanded its multichannel video offering to 26 basic channels, four premium channels and three pay-per-view channels, serving nearly 6,000 subscribers by March, 1994.⁸ Thereafter, when the Commission encouraged the deployment of digital technology to increase wireless cable's channel capacity, W.A.T.C.H. TV was one of the first commercial BRS/EBS systems in the country to deploy digital wireless cable service. Then, when the Commission adopted rules to promote use of BRS/EBS spectrum for high-speed Internet service, W.A.T.C.H. TV was one of the first wireless cable operators in the country to offer such service to its customers.

The Commission is also aware, however, that because W.A.T.C.H. TV's BRS/EBS system uses more than seven digitized channels to deliver digitally compressed multichannel video service, it cannot be accommodated in the seven channels designated for high-power, high-site transmission of video programming in the Middle Band Segment ("MBS") of the new BRS/EBS band plan.⁹ Further, the rules governing the Lower Band Segment ("LBS") and the Upper Band Segment ("UBS") of the new band plan do not accommodate the high-power, high-site transmissions that are the key to the economic viability of W.A.T.C.H. TV's video service offering.¹⁰ Thus, were

⁸ *Id.*

⁹ See 47 C.F.R. §§ 27.5(i)(2), 27.1230 *et seq.*

¹⁰ More specifically, the post-transition LBS/UBS spectrum fails to accommodate the needs of W.A.T.C.H. TV because: (i) the 5.5 MHz channelization mandated by Sections 27.5(2)(i) and (iii) and 27.1220 is incompatible with the 6 MHz channelization that is standard for over-the-air transmission of digital video programming and that is required by the equipment W.A.T.C.H. TV has installed; (ii) the spectral mask set forth in Section 27.53(1)(2) cannot be met by current equipment, as was acknowledged by the Commission's adoption of Section 27.53(1)(3) (*see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order, 19 FCC Rcd 22284, 22286 (2004) ("We agree . . . that existing digital video operations, which include first generation data systems, may not be compatible with the new spectral masks we have set for future operations.")); (iii) the permissible maximum signal strength limit at the boundary of a licensee's Geographic Service Area set forth in Section 27.55(a)(4)(ii) is far lower than
(continued on next page)

W.A.T.C.H. TV limited to just the seven channels in the MBS, its video subscribers would suffer a calamitous 75% loss of video programming. That loss would render W.A.T.C.H. TV's service uncompetitive in a market where consumer options include digital cable and DBS services with hundreds of channels. Rather clearly, that result would be a grim reward for W.A.T.C.H. TV's unparalleled efforts to meet every challenge the Commission has laid down for the BRS/EBS spectrum over the past decade.

While rebanding of the BRS/EBS spectrum may be necessary to prod the larger BRS/EBS spectrum holders like Sprint Nextel Corp. into fully deploying the 2.5 GHz band for new services to the public, the Commission must not punish W.A.T.C.H. TV in the process – as shown above, W.A.T.C.H. TV *has* succeeded in providing consumers the very valuable multichannel video programming and wireless broadband services the Commission has long desired for BRS/EBS. The *Report and Order* in WT Docket No. 03-66 suggests that the Commission understands W.A.T.C.H. TV's predicament and is not inclined to sacrifice W.A.T.C.H. TV and its customers on the altar of the new BRS/EBS band plan.¹¹ Yet, notwithstanding the undisputed record evidence in favor of exempting W.A.T.C.H. TV from the transition requirement, the *Report and Order* rejected

that produced by the system at present, and coming into compliance would require a substantial reduction in power and/or antenna height that would eliminate service to many subscribers, particularly those in the more rural areas that do not have access to alternative service providers; (iv) compliance with the height benchmarking requirement of Section 27.1221 could force a substantial reduction in the height of the W.A.T.C.H. TV transmission antenna, again forcing a substantial reduction in the service that W.A.T.C.H. TV can provide, particularly in more rural areas; and (v) the post-transition restrictions on use of the 2568-2572 MHz and 2614-2618 MHz guardband channels contained in Section 27.1222 would render those channels unusable by W.A.T.C.H. TV.

¹¹ See *Report and Order*, 19 FCC Rcd at 14199 (“[W]e are sympathetic to the predicament of those MVPD licensees that developed successful businesses under the old rules, and to their customers that receive both video and broadband services from those MVPD licensees. *We are also sympathetic to those BRS licensees that have a viable business for high-powered operations, but who need more [than] seven digitized MBS channels to deliver service to their customers, which would constitute all of the high-power spectrum in the 2.5 GHz band.*”) (emphasis added).

proposals by W.A.T.C.H. TV and others for an automatic opt-out for the handful of BRS/EBS multichannel video programming distributors (“MVPDs”) who use more than seven digitized channels to transmit video programming. Instead, the *Report and Order* forces W.A.T.C.H. TV to endure the additional cost and uncertainty of requesting and obtaining a waiver of the transition requirement.¹²

While W.A.T.C.H. TV remains hopeful that the Commission will grant W.A.T.C.H. TV’s Petition for Reconsideration in WT Docket No. 03-66 and adopt W.A.T.C.H. TV’s proposed opt-out procedure on reconsideration of the *Report and Order*, W.A.T.C.H. TV had no choice but to file a formal request for a waiver of the transition requirement on April 29, 2005.¹³ Predictably, the waiver process has given W.A.T.C.H. TV no clue as to how or when its dilemma will be resolved, *as the Commission has yet to take any action on W.A.T.C.H. TV’s waiver request since it was filed nearly five months ago.* As W.A.T.C.H. TV predicted, the waiver process is rife with regulatory uncertainty.

W.A.T.C.H. TV has already demonstrated in its prior filings in WT Docket No. 03-66 that the waiver process mandated by the *Report and Order* is an unnecessary exercise whose additional paperwork, administrative costs, time delays and associated regulatory uncertainty substantially outweigh any speculative benefit it might have to the public, and nothing since the filing of W.A.T.C.H. TV’s waiver request has proven otherwise. Conversely, adoption of W.A.T.C.H. TV’s proposal would replace case-by-case waivers with the far less cumbersome opt-out approach, and

¹² *Id.* (rejecting opt-out proposal despite noting “successful deployment of MVPD service by licensees such as W.A.T.C.H. TV”); W.A.T.C.H. TV Reply at 3-6; W.A.T.C.H. TV Petition at 5-10.

¹³ *See* W.A.T.C.H. TV Company Request for Permanent Waiver of Commission Rules Regarding Transition of Broadband Radio Service and Educational Broadband Service to Revised Band Plan, FCC File No. _____ (filed April 29, 2005).

thus would permit W.A.T.C.H. TV and other similarly situated digital BRS/EBS providers to continue making the substantial investments necessary for delivery of competitive multichannel video service to their communities, without fear that their operations will be eviscerated by a forced transition to the new BRS/EBS band plan.

Hence, W.A.T.C.H. TV continues to urge the Commission to grant W.A.T.C.H. TV's Petition for Reconsideration in WT Docket No. 03-66, adopt W.A.T.C.H. TV's proposed opt-out procedure and thereby provide W.A.T.C.H. TV and its brethren with the regulatory certainty and fair treatment to which they are entitled. If notwithstanding the record the Commission elects not to do so, the Commission must grant W.A.T.C.H. TV's pending waiver request on an expedited basis so that W.A.T.C.H. TV's ongoing uncertainty over this matter can be laid to rest once and for all. Failure to do so will put W.A.T.C.H. TV's substantial accomplishments at risk with no countervailing benefit to the public.

Respectfully submitted,

W.A.T.C.H. TV COMPANY

By: /s/ Thomas Knippen

Thomas Knippen
Vice President and General Manager
3225 West Elm Street
Lima, OH 45805
(419) 227-2266

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